

THIS PROPOSED RULE IS SUBMITTED FOR PUBLIC COMMENTS AFTER INPUT FROM INTERESTED PARTIES AND IS TO BE USED SOLELY FOR DISCUSSION PURPOSES AT THE PUBLIC HEARING ON THE PROPOSED RULE. UNDER NO CIRCUMSTANCES IS THIS PROPOSED RULE TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.

AMENDATORY SECTION (Amending Order PT 68-6, filed 4/29/68)

WAC 458-12-005 Definition--Property--Personal. The terms "personal property" and "real property" are defined in RCW 84.04.080 and 84.04.090, respectively. These definitions should routinely be consulted in any case where it is at all doubtful whether a given piece of property is real or personal.

Personal property, as defined in RCW 84.04.080, falls into two categories; namely, *tangible* personal property, that is to say, things which have a physical existence, and *intangible* personal property which consists of rights and privileges having a legal but not a physical existence. The category of tangible personal property includes but is not limited to the following:

(1) Goods and chattels. RCW 84.04.080. This category includes most tangible movables, such as

(a) Inventories, AGO 57-58, No. 206 (1958);

(b) Farm machinery, AGO 1909-1910, p. 51;

(c) Livestock and poultry, RCW 84.44.060;

(d) Logs and lumber, RCW 84.44.030;

(e) Motor vehicles, RCW 84.44.050;

(f) Books, *Booth & Henford Abstract Company v. Phelps*, 8 Wash. 549 (1894);

(g) Coin collections and coin inventories of coin dealers, AGO 63-64, No. 116 (1964);

(h) Tools.

(2) All standing timber held or owned separately from the ownership of the land on which it stands, RCW 84.04.080; *Leuthold v. Davis*, 56 Wn.2d 710 (1960).

(3) All fish traps, pound net, reef net, set net and drag seine fishing locations, RCW 84.04.080.

(4) All privately-owned improvements, including buildings and the like, upon publicly owned lands which have *not* become part of the realty, RCW 84.04.080; *Pier 67, Inc. v. King County*, 71 W.D.2d 89 (1967); AGO 1935-1936, p. 167; AGO 3-25-52; TCR 6-17-1947.

(5) All gas and water mains and pipes laid in roads, streets or alleys, RCW 84.04.080.

(6) Water craft of all descriptions, RCW 84.04.080, *Black v. State*, 67 Wn.2d 97 (1965), provided they have acquired an actual situs in the taxing county pursuant to RCW 84.44.050.

(7) Foxes, mink, marten, fish, oysters and all other

animals held or raised in captivity for business or commercial purposes, including livestock. RCW 16.72.050; AGO 4-16-1900; AGO 1927-1928, p. 88; TCR 1-6-36.

(8) The roads and bridges of plank roads, gravel roads, turnpike or bridge companies. RCW 84.44.040.

(9) Trade fixtures. This concept, which is peculiar to the landlord-tenant relationship, refers to the machinery or equipment of any commercial or industrial business which operates on leased land or in rented quarters. Such machinery or equipment is a trade fixture; i.e., the tenant's personal property, no matter how firmly it may be attached to the landlord's realty, unless it could not be removed without virtually destroying the building housing it, or otherwise seriously damaging the landlord's realty. Brown on *Personal Property* (2d Edition 1955), Sec. 144.

(10) All engines and machinery of every description used or designed to be used in any process of refining or manufacturing, unless such engines and machinery shall have been included as part of any parcel of real property as defined in WAC 458-12-010(3).

(11) All buildings and other permanent improvements constructed or placed upon the easements of public service corporations other than railroads.

(12) All surface leases, whether of public or privately-owned land, except leases for the life of the lessee. RCW 84.04.080; AGO 49-51, No. 476 (1951); TCR 8-8-41: *In Re Barclay's Estate*, 1 Wn.2d 82 (1939). This category includes practically all leases to corporations because the legal life of a corporation is almost always longer than the term of any lease to it. *Pier 67, Inc., v. King County*, 71 W.D.2d 89 (1967).

Intangible personal property includes but is not necessarily limited to the following:

(1) Contract rights to cut timber on either public or privately-owned land under which title to the timber has not yet passed. AGO 53-55, No. 29 (1953); PTB 222 (1-13-53). A contract right to cut timber is a mere license, and all contractual licenses to use someone else's realty are personal property. See WAC 458-12-005 (5-Intangibles).

(2) All mining claims, whether patented or unpatented, which are located on public land. TCR 10-3-35; TCR 4-4-1950; AGO 55-57, No. 327 (1956); *American Smelting and Refining Company v. Whatcom County*, 13 Wn.2d 295 (1942).

(3) All mining or prospecting leases, whether on public or privately-owned land, except leases for the life of the lessee. RCW 84.04.080; TCR 4-22-36; *Walla Walla Oil, Gas & Pipe Line Company v. Vallentine*, 103 Wash. 359 (1918).

(4) All contractual licenses to use public or someone else's land for specified purposes, or to take something from public or someone else's land, which have a specified minimum

term. Examples: Timber contracts, AGO 53-55, No. 29, (1953); oil and gas prospecting permits, *Walla Walla Oil, Gas & Pipe Line Company v. Vallentine*, 103 Wash. 359 (1918); grazing permits; permits to take gravel or other minerals, TCR 4-22-1936. However, a license or permit which is revocable at the will of the landowner is not property at all because it gives the licensee no legally-protected right or interest whatsoever.

(5) All possessory rights in realty which are divorced from the title to the realty. TCR 10-3-35; AGO 1937-1938, p. 353. Such possessory rights are analogous to leases; hence they are personal property unless they are coextensive with the life of their holder. This category includes the possessory interest which an installment contract for the sale of public or privately-owned land creates in the vendee. See RCW 84.40.230.

(6) Public utility franchises owned by public service corporations. A public utility franchise is the right to use publicly owned real estate for power lines, gas or water lines, sewers or some other public utility facility. *Commercial Electric Light and Power Company v. Judson*, 21 Wash. 49 (1899); *Chehalis Broom Company v. Chehalis County*, 24 Wash. 135 (1901). Such public utility franchises are very similar to public utility easements, which are personal property under Paragraph 8 thereof. However, a Washington corporation's primary franchise to exist and do business in corporate form is not taxable property. *Bank of Fairfield v. Spokane County*, 173 Wash. 145 (1933).

(7) Public utility easements owned by public service corporations other than railroads. RCW 84.20.010.

(8) See WAC 458-50-150 through 458-50-190 for rules relating to exemption of intangible personal property under RCW 84.36.070.